

RECEIVED
CENTRAL FAX CENTER
APR 22 2010

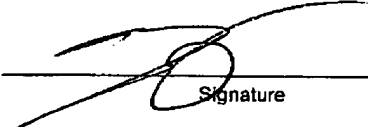
Doc Code: AP.PRE.REQ

PTO/SB/33 (07-09)

Approved for use through 07/31/2012. OMB 06551-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 1006/0135PUS1	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]		Application Number 10/579,192	Filed 16 Aug 2006
on _____		First Named Inventor ANGERMANN	
Signature _____			
Typed or printed name _____		Art Unit 3744	Examiner DUONG, THO V
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>			
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>51011</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____		 _____ Signature Martin R. Geissler _____ Typed or printed name 1.703.621.7140 _____ Telephone number April 22, 2010 _____ Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			
<input type="checkbox"/> *Total of _____ forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

**RECEIVED
CENTRAL FAX CENTER****APR 22 2010**

Attorney Docket No.: 1006/0135PUS1

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Hans-Heinrich ANGERMANN

Conf. No.: 6692

Application No.: 10/579,192

Art Unit: 3744

Filed: August 16, 2006

Examiner: Tho V. DUONG

Title: HIGH-TEMPERATURE SOLDERED
EXHAUST HEAT EXCHANGERCommissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**STATEMENT IN SUPPORT OF REQUEST FOR PRE-APPEAL BRIEF REVIEW**

Sir:

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Claim 1 recites, inter alia, an apparatus for exchanging heat having at least one first flow path for a first fluid, at least one second flow path for a second fluid, at least one separating element which substantially prevents the first fluid from entering the second flow path and/or the second fluid from entering the first flow path, and cohesive joins connecting various elements of the apparatus. At least the connections in which the material forming the cohesive join is substantially directly exposed to the flow of the first fluid comprise a first connecting material, and connections in which the material which forms the cohesive join is indirectly exposed to the flow of the first fluid comprise a second connecting material, and the compositions of the first and second connecting

Serial No. 10/579,192
Reply to Office Action dated February 3, 2010

Docket No. 1006/0135PUS1

materials are different than one another. The final Office Action indicates that it is not clear from the underlined language above "whether applicant is claiming that the join is exposed or not exposed to the fluid." It is respectfully submitted that claim 1 indicates that a join is exposed to a flow of a fluid. Adding the adverb "indirectly" before the word "exposed" modifies the verb "exposed" and provides additional information about the nature of the exposing. However, there is no basis in the rules of claim interpretation or English grammar for finding that the phrase "indirectly exposed" covers situations where no exposure occurs. It is respectfully submitted that claim 1 is definite and that there is no basis for interpreting the phrase "indirectly exposed" as covering situations where no exposure occurs.

Some of the arguments Applicant presented after final are addressed in an Advisory Action dated April 12, 2010. However, the Advisory Action does not address the language of claim 1. Claim 1 recites different elements being exposed, directly or indirectly, to a fluid flow, not merely to a fluid. Whether the phrase "indirect exposure to a fluid" is definite is not at issue. The issue is the definiteness of direct and indirect exposure to a fluid flow. The language being called indefinite in the Advisory Action is not the language of claim 1, and the actual language of claim 1 is submitted to satisfy the requirements of 35 U.S.C. 112, second paragraph.

Dictionary definitions of "expose" ("to submit or make accessible to a particular action or influence") and "direct" ("from point to point without deviation: by the shortest way") are of record. From these definitions, and the specification which uses these terms consistently with their ordinary meanings, it is respectfully submitted that one ordinary skill in the art would understand the phrase "indirectly exposed" to a fluid flow

Serial No. 10/579,192
Reply to Office Action dated February 3, 2010

Docket No. 1006/0135PUS1

to refer to an exposure to a flow of fluid that is not a direct exposure to that flow of fluid. For example, with reference to Figure 1, a fluid flow exits connection piece 6 and impinges against cohesive connection 11. Cohesive connection 11 is therefore directly exposed to this fluid flow. Cohesive connection 12, on the other hand, is only exposed to the fluid flow from connection piece 6 after the flow has traveled through one of the passageways 1 and changed directions inside fourth delimiting element 5 to come into contact with the join. Such exposure is not direct exposure to the flow because of the intervening elements guiding and diverting the flow.

For the foregoing reasons, it is respectfully submitted that the pending claims are definite and satisfy the requirements of 35 U.S.C. 112, second paragraph.

REJECTION UNDER 35 U.S.C. 103(a)

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shibagaki in view of either JP 2002-295991 ("Ozawa") or CN 1305086 ("Tetsu"). Claim 1 recites an apparatus for exchanging heat having a number of structural elements and cohesive joins between various ones of the elements. Claim 1 further recites that at least the connections in which material forming a cohesive join is substantially directly exposed to a flow of a first fluid comprise a first connecting material, and connections in which the material which forms a cohesive join is indirectly exposed to the flow of the first fluid comprise a second connecting material different than the first material. Shibagaki does not show connections in which a first material forming a cohesive join is substantially directly exposed to the flow of a first fluid and connections in which a second material which forms a cohesive join is indirectly exposed to the flow of the first fluid. Instead,

Serial No. 10/579,192
Reply to Office Action dated February 3, 2010

Docket No. 1006/0135PUS1

only one type of material for forming a join is disclosed.

Neither of the secondary references show a join formed from a first material being directly exposed to a first fluid flow and a join made from a second, different, material being indirectly exposed to the first fluid flow. Instead, the different join materials disclosed in Ozawa and Tetsu are each exposed to a different fluid. No joins of different material are exposed to "a first fluid" as recited in claim 1. Therefore, neither Ozawa nor Tetsu provides any reason to modify Shibagaki in the manner proposed in the Office Action. At most, the combination of references suggests that a second type of material should be used for joins that are not exposed to the first fluid at all.

The only basis for this rejection appears to be the examiner's interpretation that "indirectly exposed" means "not exposed at all." It is respectfully submitted that this interpretation is not consistent with the ordinary meanings of the claim terms or common English grammar. For at least these reasons, the rejection of claim 1 is respectfully traversed, and it is respectfully submitted that claim 1 is allowable over the art of record.


Claims 2-21 depend from claim 1 and are submitted to be allowable for at least the same reasons as claim 1.

Serial No. 10/579,192
Reply to Office Action dated February 3, 2010

Docket No. 1006/0135PUS1

Clams 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shibagaki in view of Tetsu and further in view of Evans. Claims 20 and 21 depend from claim 1. Evans does not address the shortcomings of Shibagaki and Tetsu discussed above in connection with claim 1. Claims 20 and 21 are therefore submitted to be allowable for at least the same reasons as claim 1.

Respectfully submitted,



Martin R. Geissler
Registration No. 51011

PO BOX 1364
Fairfax, VA 22038-1364
1.703.621.7140

Date: April 22, 2010